IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JAIPUR BENCH, JAIPUR.

O R D E R

S.B. CIVIL WRIT PETITION NO.3024/2006.

Ram Lal and anr.

Vs.

Civil Judge (Jr.Div.) Neemkathana and ors.

Date of Order:- 4/12/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Ajay Gupta for the petitioners.
Shri Mukesh Bijarnia on behalf of
Shri Anoop Dhand for the respondents.

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The petitioners have filed this writ petition aggrieved by the order of the trial court dated 17/3/2006 whereby, the trial court directed that Issue No.4 shall be tried as a preliminary issue in preference to other issues framed.

Learned counsel for the petitioner argued that already on the same subject matter predecessor of the presiding officer on 24/1/2005 by a detailed order held that such an issue was a mix question of law and fact and, therefore, could not be tried separately as a preliminary issue. It was argued that mere change of the presiding officer does not

justify passing of a fresh order. It is submitted that this court while issuing notices to the respondents vide order dated 19/4/2006, restrained the trial court from deciding the Issue No.4 as a preliminary issue, however, permitted it to proceed with recording of the evidence in the suit. Evidence of the plaintiff petitioner has already recorded and, therefore, the matter in any case is to be now decided on merits on all the issues.

Learned counsel for the respondents opposed the writ petition and argued that inspite of the earlier order, the learned trial court could again re-examine the matter and direct the trial of Issue No.4 as preliminary issue. It is submitted that Preliminary Issue No.4 was to the effect whether the suit for setting aside the sale deed valued at Rs.50,000/- has been under valued and amount of court fee has been paid deficit, thus, taking the matter within the purview of the court of munsiff whereas if the court fee valuation had been correctly made, the suit would have been liable to be tried by a court higher in hierarchy.

Having heard learned counsel for the petitioner and perused the impugned order, I hardly find any justification for the trial court to pass a fresh order when already on the same issue a particular view had been taken by the court earlier. I am inclined to uphold the contention of the learned counsel for the petitioner that mere change of the presiding officer would not justify review and reversal of the last order which had otherwise attained finality. As reported, the evidence of the plaintiff has now been completed and the matter needs to be decided on merits on all issues together.

In the result, the writ petition is allowed. The order dated 17/3/2006 passed by the Civil Judge (JD) Neemkathana, District Sikar is quashed and set-aside. The trial court may proceed to decide the matter on all issues in accordance with law.

(MOHAMMAD RAFIQ), J.

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